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Attorneys for Baptist Foundation of Arizona, Inc.  
and certain subsidiaries

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF ARIZONA**

In re:	)	In Proceedings Under Chapter 11
	)	
BAPTIST FOUNDATION OF ARIZONA, an	)	Case Nos. 99-13275-ECF-GBN through 99-
Arizona nonprofit 501(c)(3) corporation, and	)	13364-ECF-GBN
related proceedings,	)	
	)	All Cases Jointly Administered Under Case
	)	No. 99-13275-ECF-GBN
Debtors.	)	
	)	<b>DEBTORS' OBJECTION TO CLAIMS OF</b>
	)	<b>NATIONAL GUARANTEE INSURANCE</b>
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Pursuant to Rule 3007 of the Bankruptcy Rules of Procedure and Section 502(a) of the Bankruptcy Code, Debtor and Debtor-in-Possession, Baptist Foundation of Arizona, Inc. (and certain of its subsidiaries, who also may be co-debtors, as applicable; collectively “**BFA**”), submits the following objection to the proofs of claim filed by National Guarantee Insurance (“**NGI**”). In support of this objection, BFA offers the following memorandum of points and authorities.

## **MEMORANDUM IN SUPPORT OF OBJECTION**

### **I. FACTS**

On March 30, 2000, NGI filed two identical proofs of claim against, respectively, The Foundation Companies, Inc. (“TFCI”) and Northwood Park, Inc. (“NPI”) alleging a general unsecured nonpriority claim in the amount of \$22,052.00, “plus interest, attorney’s fees, and expenses.” Each proof of claim states that the TFCI and NPI requested NGI to provide a subdivision improvement bond, and that TFCI and NPI are indebted to NGI for two annual renewal premiums, of \$11,026 per year, for the improvement bond. A copy of the subdivision improvement bond is attached to each of the proofs of claim.

BFA’s records show that NGI’s proof of claim is based on a purported nonpayment of premiums for 1997 and 1999 by either TFCI or NPI. (See February 11, 2000 Correspondence from Curtis Ensign to The Foundation Companies) (attached).

### **II. LAW AND BASIS FOR OBJECTION**

Objections to claims are governed by 11 U.S.C. § 502(a), which provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects.” Section 502(b) provides that “[i]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount.”

Federal Rule of Bankruptcy Procedure 3001(f) provides that a proof of claim filed in accordance with the rules “shall constitute prima facie evidence of the validity and amount of the claim.” The burden of proof is on the objecting party to produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of the proof of claim. However, “the ultimate burden of persuasion is always on the claimant.” In Re Holm, 931 F.2d

620, 623 (9th Cir. 1991) (citing 3 L. King, *Collier on Bankruptcy* § 502.02, at 502-22 (15th ed. 1991) (footnotes omitted)).

A properly supported objection to a claim initiates a contested matter under the Bankruptcy Rules of Procedure. See Fed. R. Bankr. P. 3007 (adv. comm. note).

BFA objects to NGI's claim in its entirety as a disputed claim. BFA's records show that the 1997 premium payment was waived for failure to timely bill, and that the 1999 premium payment was paid. (See February 23, 2000 Correspondence from BFA to Curtis Ensign) (attached).

### **III. CONCLUSION**

For the above reasons, BFA respectfully requests that the Court (i) schedule an evidentiary hearing on the claims brought by NGI; (ii) require claimant to demonstrate its claims by a preponderance of the evidence; and (iii) disallow each claim to the extent merited by the applicable facts and law.

RESPECTFULLY SUBMITTED this 7th day of November, 2000.

**SQUIRE, SANDERS & DEMPSEY L.L.P.**

Two Renaissance Square  
40 North Central Avenue, Suite 2700  
Phoenix, Arizona 85004-4441

By: /S/ Craig D. Hansen  
Craig D. Hansen

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and certain of its subsidiaries and affiliates

LAW OFFICES OF  
**CURTIS D. ENSIGN**

3225 NORTH CENTRAL, SUITE 1600  
PHOENIX, ARIZONA 85012  
TELECOM: (602) 266-3353  
TELEPHONE: (602) 266-3300

CURTIS D. ENSIGN

February 11, 2000

The Foundation Companies, Inc.  
300 West Osborn, Suite 110  
Phoenix, AZ 85067

Re: My Client: National Guaranty Insurance Company  
Bond No.: NGA02-01-4551  
Project: Offsite improvements for  
Northwood Park Estates.  
Buckey, Arizona

To Whom It May Concern:

Please be advised that I represent National Guaranty Insurance Company. As I am sure you recall, the annual premiums for the above-described bond for 1997 and 1999 have not been paid. Since each yearly premium is in the amount of \$11,026.00, the principal amount now owed is \$22,052.00.

On behalf of my client, demand is hereby made that the sum of \$22,052.00 be paid within ten (10) days from the date of this letter. If payment is made in the said amount, my client will waive any claims for interest, which claims, alone, could amount to \$3,000.00 or so.

Payment should be made with a cashier's check or certified funds, made payable to National Guaranty Insurance Company, but sent or delivered to me at the address indicated above. If payment is not made as indicated, then suit will be brought to collect all amounts due. Any such suit will include a claim for interest, costs and attorney's fees—the amount of

The Foundation Companies, Inc.  
February 11, 2000  
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which could be quite substantial. Thus, your company can minimize its liability by promptly paying the amount now demanded.

If there are any questions or comments, please do not hesitate to contact me. However, please be advised that this letter is not the first in a series of demand letters. Rather, this letter is the only letter you will receive prior to litigation being brought.

Sincerely yours,

  
Curtis Ensign

CDE/cg

cc: Fred Carroll



February 23, 2000

Curtis D. Ensign, Esq.  
3225 North Central Avenue, Suite 1609  
Phoenix, Arizona 85012

RE: The Foundation Companies, Inc./National Guaranty Insurance Company  
Demand of February 16, 2000

Dear Mr. Ensign:

I believe our records will show that at least the 1997 payment was waived by your client, through its agent, for failure to timely bill. To my knowledge this is the first notice received since the last payment was made, I believe in 1999.

In any event, The Foundation Companies, Inc. has filed bankruptcy and your clients only recourse is to file a proof of claim in Case No. 99-13275-PHX-GBN. I enclose a Notice of Filing Bankruptcy for your review. Please note that The Foundation Companies, Inc. is listed as number 4, and Northwood Park, Inc. as company number 51.

Sincerely,

Dennis E. McKelvie, Esq.  
Assistant General Counsel

DEM:tgh  
Enclosure

cc: Mark Dickenson, Baptist Foundation of Arizona  
Craig Hansen, Squire, Sanders & Dempsey  
Jim Thomas, Squire, Sanders & Dempsey  
Larry Watson, Squire Sanders & Dempsey

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February 23, 2000 4:34 PM